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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE STANLEY BLUMENFELD, JR., U.S. DISTRICT JUDGE

SANTA CLARITA VALLEY WATER AGENCY,)
)
Plaintiff,)
)
v.) Case No.
) CV 18-6825 SB (RAOx)
WHITTAKER CORPORATION, et al.,)
) Volume 4
Defendants.) (Pages 370 - 458)
)
_____)

REPORTER'S TRANSCRIPT OF TRIAL PROCEEDINGS
TRIAL DAY 2: P.M. SESSION
THURSDAY, NOVEMBER 18, 2021
1:03 P.M.
LOS ANGELES, CALIFORNIA

MYRA L. PONCE, CSR 11544, CRR, RPR, RMR, RDR
FEDERAL OFFICIAL COURT REPORTER
350 WEST 1ST STREET, ROOM 4455
LOS ANGELES, CALIFORNIA 90012
(213) 894-2305

APPEARANCES OF COUNSEL:

FOR THE PLAINTIFF:

NOSSAMAN, LLP
BY: BYRON P. GEE
BY: RAVEN MCGUANE
BY: PATRICK J. RICHARD
BY: FRED FUDACZ
Attorneys at Law
777 South Figueroa Street, 34th Floor
Los Angeles, California 90017
(213) 612-7800

NOSSAMAN, LLP
BY: ILSE CHANDALAR SCOTT
Attorney at Law
50 California Street, 34th Floor
San Francisco, California 94111
(415) 398-3600

FOR THE DEFENDANT WHITTAKER CORPORATION:

EDLIN, GALLAGHER, HUIE & BLUM
BY: MICHAEL E. GALLAGHER, JR.
BY: FRED M. BLUM
BY: DANIEL ERIC TROWBRIDGE
Attorneys at Law
500 Washington Street, Suite 700
San Francisco, California 94111
(415) 397-9006

ALSO PRESENT:

MATT STONE
SCOTT FRYER
RON BEATON
ERIC LARDIERE

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1 THURSDAY, NOVEMBER 18, 2021; 1:03 P.M.

2 LOS ANGELES, CALIFORNIA

3 -oOo-

4 (In the presence of the jury:)

01:03PM 5 THE COURT: We are back on the record in the trial
6 matter with all present who were present before the break,
7 including the jury. And Mr. Abercrombie is still on the
8 witness stand.

9 And you understand that you remain under oath?

01:06PM 10 THE WITNESS: Yes, Your Honor.

11 THE COURT: All right. Mr. Blum, you may continue
12 with your cross.

13 MR. BLUM: Your Honor, we sent an instruction.

14 THE COURT: Oh, yes. Do I have that?

01:06PM 15 MR. BLUM: It was sent to Mr. Cruz.

16 THE COURTROOM DEPUTY: It hasn't arrived at my
17 e-mail.

18 THE COURT: All right. Do you have a written form
19 that you can hand to the Court? If so, I'm happy to read the
01:06PM 20 instruction that you are requesting.

21 MR. BLUM: We'll proceed, Your Honor.

22 THE COURT: All right.

23 ///

24 ///

01:06PM 25 ///

KEITH ABERCROMBIE,

PLAINTIFF'S WITNESS, PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

CROSS-EXAMINATION (RESUMED)

BY MR. BLUM:

Q. Ready to go, Mr. Abercrombie?

A. Yes.

Q. All right. I want to clear up one or two things that we dealt with before the break.

The e-mail that we were discussing of Mr. Gee that was forwarded by Mr. Alvord, Mr. Gee was the one that is sitting at the counsel table right now; correct?

A. Correct.

Q. All right. And -- all right. Let's move on to a different subject. Let's talk about the permit.

Have you ever reviewed the permit that was issued that allowed the water agency to serve water from S-1 and S-2, or Saugus 1 and Saugus 2, wells?

A. Yes.

Q. When was the last time you looked at it?

A. Looked at parts of it, I don't know, within the last few weeks.

Q. Okay. Now, that is stipulated Exhibit No. 96, if you can bring it up, please.

(Exhibit 96 received into evidence.)

Q. (BY MR. BLUM:) Now, I want to talk to you about

1 some terms before we get into the heart of it.

2 We talked about an MCL, but do you know what a
3 public health goal is?

01:08PM 4 A. Generally. It's a standard that's used -- it's not
5 a -- it's not a standard that the Department of Public Health
6 or DDW uses for these type of sub chemicals that have an MCL.
7 But my understanding is it's something that also looks at
8 health and -- I think it maybe, you know, doesn't take into
9 account things like the -- the ability to -- the ability to
01:08PM 10 treat or get rid of something, nor the cost that it would take
11 to get rid of something.

12 Q. And what's an MCL equivalent?

13 A. An MCL equivalent is a term that I think is found in
14 the 97-005 process document that allows you to take a group of
01:09PM 15 chemicals that exist at some levels, say, below the MCL, and do
16 a mathematical calculation on those chemicals and then add all
17 that up to -- to sort of determine if -- you know, to come up
18 with that term, the MCL equivalent.

19 Q. And am I correct, sir, that according to the user's
01:09PM 20 guide for the DDW, if that equivalent is below 1, then the
21 water is safe?

22 A. I believe that -- that user's guide provides for a
23 process to calculate an MCL equivalent or demand that we
24 calculate an MCL equivalent, and then the DDW takes that
01:10PM 25 information along with the rest of the information into

1 consideration as to how they permit the project.

2 Q. And the critical number is: Is it above or below 1;
3 correct?

4 A. Correct.

01:10PM 5 Q. And isn't it true that, in all of the applications
6 that the water agency has made to the DDW, that the water
7 agency has never calculated the MCL equivalent above 1?

8 A. I'm not -- I don't know that that's the case. I
9 seem to recall there had been a level at one point above 1.

01:10PM 10 You know, we -- we've -- this wasn't a calculation that, you
11 know, we were that familiar with, so we took what they told us,
12 we did -- did the process. They came back and said, well, you
13 didn't include this chemical or this constituent. We want to
14 look at those things as well. And so I think it's had several
01:10PM 15 iterations.

16 Q. In the latest application made by the water agency,
17 isn't it true that, according to the consultants you hired,
18 Kennedy Jenks, that MCL equivalent was below 1?

19 A. I believe that's the case, yes.

01:11PM 20 Q. And the public health goal for -- I think for PCE or
21 TCE is 1.7 or 1.9 part per billion; correct?

22 A. I -- I don't know what the level is.

23 Q. But when was the last time the VOCs in either V-201,
24 V-205, Saugus 1, or Saugus 2 was above the public health goal?

01:11PM 25 A. I don't know.

1 Q. Has it ever been?

2 A. Well, assuming that's the number, the 1.9. I'm not
3 aware that we've seen a number that high in 201, nor 205. I
4 don't know about the Saugus wells. I know those numbers have
01:11PM 5 been higher than I think we've seen at 201 and 205. So I can't
6 say for sure.

7 Q. But you don't know if it's above or below the public
8 health goal?

9 A. Correct.

01:12PM 10 Q. How about right now or the latest testing that was
11 done, is it above or below the public health goal?

12 A. I haven't looked at the latest testing, so I don't
13 know.

14 Q. Well, sitting here, can you testify that, in the
01:12PM 15 latest round of testing, that the VOCs in any of the wells that
16 are at issue here were above an MCL, an MCL equivalent, or a
17 public health goal?

18 A. The VOCs have MCLs. The MCL equivalent process is
19 useful for looking at those, but it's also useful for looking
01:12PM 20 at things that don't have MCLs. So I don't -- I guess I don't
21 follow the -- your question.

22 Q. All right. Why don't we just move on.

23 If you take a look at the permit, the requirement --
24 is there something in the permit called an "operational goal"?

01:13PM 25 A. I believe that's the term they use, yes.

1 Q. Is it -- isn't an operational goal different than a
2 permit requirement?

3 A. I don't think so. I mean, I look at everything in
4 this permit as -- as something we've -- we try to follow. This
01:13PM 5 is a document that they've presented to us. They've listed
6 various things that you have to do. And so this entire permit
7 is something that we -- we look to follow.

8 Q. I understand that, but that wasn't my question.

9 Isn't an operational goal different than a
01:13PM 10 requirement?

11 A. I don't know that to be the case, no.

12 Q. Do you know that it's not the case?

13 A. I don't know that it's not the case either, but I
14 don't know that it is the case.

01:13PM 15 Q. Okay. If we could take a look at the permit on
16 96.8.

17 Do you see where it says under "General" and under
18 paragraph 2 there?

19 A. Okay.

01:14PM 20 Q. Now, this says that the water agency shall meet all
21 MCLs; correct?

22 A. Correct.

23 Q. And as far as you know, for VOCs, it has always done
24 that; correct?

01:14PM 25 A. Yes.

1 Q. All right. Now, if we can go to page 12. And let's
2 see. Do you see where it talked -- you see where it says 20,
3 paragraph 20 under blending?

4 A. Yes.

01:14PM

5 Q. Okay. And what does it say about achieving the
6 operational goal?

7 A. Do you want me to read the paragraph?

8 Q. Well, doesn't it say that you're supposed to
9 establish procedures and verification in order to achieve your
10 operational goal?

01:14PM

11 A. Correct.

12 Q. Now, if you're correct and 10 percent of the water
13 still contains VOCs, how long has it been since the water
14 agency has met the operational goal?

01:15PM

15 A. Well, I mean, we meet it every month when we -- or
16 every week when we sample and there's no detection. But we
17 haven't consistently met it since the operation of the facility
18 on, like, a permanent basis.

19 Q. And the wells are still operating? The DDW hasn't
20 pulled your permit?

01:15PM

21 A. They have not.

22 Q. Have you -- have you seen a letter from them that
23 says, water agency, meet the operational goal or turn the
24 faucet off?

01:15PM

25 A. No.

1 Q. Now -- all right. Let's go further on.

2 Now, attached to this permit, wasn't there an
3 engineering report that was prepared by one of the water
4 agencies? I think it's the Metropolitan Water Department.

01:16PM 5 If we can go to page 19, 96.19. Do you remember
6 seeing this?

7 A. Yes. I've seen that as part of that document.

8 Q. All right. And this was prepared by
9 Susan Brownstein; correct?

01:16PM 10 A. That's what it says.

11 Q. And who is Susan Brownstein?

12 A. It says that she's a -- one of the engineers, so a
13 staff member at DDW.

14 Q. Okay. And then it was approved by Mr. O'Keefe;
01:16PM 15 correct?

16 A. Yes.

17 Q. Isn't -- what's Mr. O'Keefe's current position with
18 the DDW?

19 A. Might be the same. I mean, he's in charge of -- of
01:16PM 20 the district. So I don't know what the title is, but it might
21 be the same as it was then, actually.

22 Q. The colloquialism would be head honcho?

23 A. Yeah.

24 MR. BLUM: All right. Now, if we could go to
01:17PM 25 page .34.

1 Q. Now, have you seen -- have you ever read in this
2 report the discussion of sources of the contamination other
3 than Whittaker?

4 A. No. I really never read that part of the report.

01:17PM 5 MR. BLUM: If you can go to the last full paragraph.
6 And if you can blow that up, Rick.

7 Q. (BY MR. BLUM:) Okay. You see where it talks about
8 AL-12B?

9 A. Uh-huh. Yes.

01:17PM 10 Q. All right. And then the second-to-the-last line, it
11 says, "The TCE and the PCE contamination at this location is
12 not believed to have originated at the Whittaker Bermite site"?

13 A. Okay.

14 Q. What, if anything, has the water agency done to find
01:17PM 15 out what the source is of that contamination?

16 A. Well, I mean, there is -- there was a study I know
17 that was done that we talked about just before that was done in
18 2015-ish or so by CH2M Hill to try to look further into the
19 contamination sources.

01:18PM 20 Q. That was the study in which CH2M Hill says you need
21 to do further testing, which has never been done?

22 A. Right.

23 Q. All right. Now, hasn't the water agency continually
24 told the public that there's multiple possible sources of VOCs
01:18PM 25 that can contaminate the water?

1 A. I don't know. I know we've got the report from --
2 the CH2M Hill report that you've talked about that has
3 identified potentially two sources.

01:18PM 4 Q. Well, has the water agency ever told the public that
5 VOCs can come from gas stations, petroleum production,
6 stormwater runoff, or septic tanks?

7 A. We might have. That might have been a -- as far as
8 in the water quality report, a statement that defines potential
9 sources just in general for VOCs.

01:19PM 10 Q. And in your -- based on your knowledge, it's true
11 that VOCs can originate at gas stations, petroleum production,
12 stormwater runoff locations, or septic tanks; correct?

13 A. I believe that would be correct, yes.

01:19PM 14 Q. All right. I want to move to the damage -- the
15 damage portions here.

16 THE COURT: And before you do so, ladies and
17 gentlemen, you're going to be hearing -- I believe, that
18 Mr. Abercrombie was designated a 30(b)(6) witness with respect
19 to the issue of damages. When a corporation designates a
01:19PM 20 Rule 30(b)(6) witness as a deponent, that witness is authorized
21 to speak for the organization on the specified matters, unlike
22 other employees deposed in the litigation.

23 The testimony of a Rule 30(b)(6) representative
24 in -- is an evidentiary admission. When you evaluate the
01:20PM 25 testimony of a Rule 30(b)(6) representative, you may have to

1 decide which testimony to believe and which testimony not to
2 believe. You may consider the credibility of the witness in
3 determining whether to believe the testimony of a Rule 30(b)(6)
4 representative.

01:20PM 5 You may proceed.

6 MR. BLUM: Thank you, Your Honor.

7 Q. (BY MR. BLUM:) Mr. Abercrombie, do you recall in
8 December of 2019 you testified as a 30(b)(6) witness on the
9 issue of damages?

01:20PM 10 A. I recall a deposition, yes.

11 Q. Do you recall you were testifying as a corporate
12 representative?

13 A. I -- I recall I was that when I was there, yes.

14 Q. All right. Good.

01:20PM 15 Now, the damage calculations that you did that you
16 showed the jury when you were looking at the -- when you were
17 looking at the amount of water that would have been produced
18 and therefore had to be replaced; correct?

19 A. Yes.

01:21PM 20 Q. Do you remember that?

21 Which years did you choose to look at in order to
22 make the determination as to how much water would be needed?

23 A. For -- for V-201, I believe I initially looked at --
24 this was in or about 2010, you know, time frame when the well
01:21PM 25 went out of service. So it's kind of when I started looking at

1 that. And I looked at the historical production of the well.
2 That well had only been drilled and put online in, like, '89,
3 '90.

01:21PM 4 So I looked back at the production from that well
5 for time periods before the 2010 time period, if you will. And
6 I believe I had, like, a five- or six-year period I looked at,
7 and then I went back to pick up the full maybe nine years or
8 whatever it was.

9 Q. And then did you average those numbers?

01:22PM 10 A. No. I -- I -- I got those two -- I mean, I averaged
11 the individual numbers over those five years or whatever, but
12 then I picked the smaller of those two to avoid a fight.

13 Q. Okay.

01:22PM 14 A. Frankly. It wasn't a huge volume of water, but I
15 didn't want to go down that path. So I -- with your client.
16 So I -- I picked the five-year average or whatever it was that
17 gave the slightly smaller volume of 2 -- I think it was
18 214 acre-feet per year.

01:22PM 19 Q. Now, you testified, sir, did you not, that the only
20 two possible sources of water are groundwater and State water;
21 correct?

22 A. Those are the two we have available to us, yes.

23 Q. That's not a correct statement, is it?

01:23PM 24 A. Well, for -- I mean, if you want to include the
25 500 acre-feet of water we have for recycled water.

1 Q. Well, how about banked water?

2 A. Well --

3 Q. Do you have banked water?

01:23PM

4 A. To me, imported water includes any water we bring
5 down the aqueduct into our treatment plants.

6 Q. But do you -- what is banked water, sir?

01:23PM

7 A. Banked water is water that we as an agency have
8 purchased and put in groundwater storage banks in the
9 Central Valley, for instance, that can be used in periods of
10 drought.

11 Q. And other than transportation costs, you don't have
12 to pay for that water because you already paid for it earlier
13 on; correct?

01:23PM

14 A. Um, in some cases. Other cases, I think that their
15 deals for the water, that you have to replace that water with
16 volumes in the future depending on where you're getting it
17 from.

18 Q. Don't you also have contracts with Kern and
19 Yolo County for water?

01:24PM

20 A. I believe so, yes.

21 Q. So there are at least four water sources, not two;
22 correct? Actually, five. Yolo County, Kern County, and
23 Big Water, plus the two we talked about; correct?

01:24PM

24 A. Well, I would still lump that, again, into imported
25 water, is water that comes down the aqueduct and into our

1 system.

2 Q. Now, in doing your calculations about the costs, did
3 you take into account the different costs of water if you use
4 banked water or water you have under contract with, Kern County
01:24PM 5 or Yolo, versus water that you have to buy outright from the
6 State?

7 A. The calculations --

8 Q. Did you take it into account or not?

9 A. We did not take that into account because they
01:24PM 10 weren't part of the calculation.

11 Q. They were not part of it because you decided they're
12 not part of it; correct?

13 A. Because they are not appropriate to be part of it.

14 Q. Well, can you -- do you have access to your banked
01:25PM 15 water?

16 A. Are you asking today do we have access to it? I
17 don't know.

18 Q. Well, when you -- a year ago, did you have access to
19 it?

01:25PM 20 A. Again, I don't know. I'm not the department that
21 has -- I mean, we have access to it until we've used it.

22 Q. Well, in making your calculations, did you look into
23 whether or not there was banked water or water you had rights
24 to under contracts with other counties to draw from?

01:25PM 25 A. No.

1 Q. All right. Now, in -- so let's go to the issue of
2 damages. And I want to talk about specifically your testimony
3 as a corporate representative for the water agency.

4 As that representative, are you aware of any
01:26PM 5 instance in which VOCs have prevented the delivery of water to
6 your customers?

7 A. Other than delaying our permit, no.

8 Q. Are you -- are you aware of any instance in which
9 VOCs have prevented the delivery of water to your customers?
01:26PM 10 Yes or no.

11 A. No. My answer was what I just said. We can't
12 deliver water from V-201 right now because of VOCs.

13 Q. Okay. Well, is that what you testified to in your
14 deposition?

01:26PM 15 A. I don't know. I don't remember.

16 Q. All right. It's page 45, lines 12 through 15.

17 MR. BLUM: When counsel has a chance to see it, I'm
18 going to play the video.

19 Patrick, is it okay?

01:27PM 20 MR. RICHARD: He's not my witness.

21 MR. GEE: I'm fine with it.

22 (Videotaped deposition was played:)

23 Q. *Are you aware of any occasion in which the*
24 *presence of VOCs has prevented water from being*
25 *delivered to any of your customers?*

1 A. No.

2 Q. (BY MR. BLUM:) Now, when you were testifying on
3 that day, you were under oath; correct?

4 A. Correct.

01:27PM 5 Q. Same oath you took here?

6 A. Yes.

7 Q. And you told the truth then; right?

8 A. Yes.

9 Q. And there was no qualification in your deposition
01:27PM 10 when you were asked, has it prevented any delivery? It was
11 just "No."

12 A. That's correct.

13 Q. Now, here, there's qualifications; correct?

14 A. Well, I'm telling you what the case is here.

01:27PM 15 Q. Now, the other -- one of the last questions is
16 are -- other than blending water and the cost of blending
17 water, are you aware of any damages suffered by the plaintiff
18 from VOCs?

19 A. Well, are you lumping replacement water in with
01:28PM 20 blending water? I mean, that's --

21 Q. No.

22 A. That's an --

23 Q. Other than blending water, any damages?

24 A. Well, there's replacement water.

01:28PM 25 Q. Anything else?

1 A. I can't think of anything right now.

2 Q. Okay. Now, isn't -- in your deposition as the
3 corporate representative, didn't you testify that the only
4 damage was blending water?

01:28PM 5 A. I guess so since you're asking me the question, but
6 I don't remember what I testified.

7 Q. All right. Again, page 45, line 20 through 23.

8 MR. BLUM: Your Honor, I'm just waiting for counsel.

9 THE COURT: He's had sufficient time. Please
01:29PM 10 proceed.

11 MR. BLUM: Okay. Play it.

12 (Videotaped deposition was played:)

13 Q. *Are you aware of any damages suffered by the*
14 *Water District as a result of the presence of VOCs*
15 *other than the need to blending water for V-201?*

16 A. No.

17 Q. (BY MR. BLUM:) When you said that, when you said
18 "No," you were under oath; correct?

19 A. Correct.

01:30PM 20 Q. All right. Now, this is the last issue that I
21 want -- that we're going to talk about.

22 You saw -- you were shown a photograph -- I think
23 it's Exhibit 471 -- of basically the piping that's in -- for
24 V-201; correct?

01:30PM 25 A. Yes.

1 Q. That was paid for by Whittaker; right?

2 A. Well, part of that was, of the perchlorate treatment
3 system.

4 Q. Well, that is the perchlorate treatment system.

01:30PM 5 A. Well, there's more in the picture. The well is in
6 the background. There's other things. So, yes, that treatment
7 system was funded by Whittaker pursuant to our V-201 agreement.

8 Q. Right.

9 And, in fact, Whittaker has already paid tens of
01:30PM 10 millions of dollars to the water agency; correct?

11 A. Over the years in building the several plants, sure.

12 Q. Actually, it's been upwards of 60 million with
13 another 10 million in a contingency fund?

14 A. I don't know the numbers, so --

01:31PM 15 MR. BLUM: All right. If we can go to
16 Exhibit 489 -- I'm sorry. Not 489. Yeah, 489, page 795. And,
17 again, I think this is the -- yeah. The paragraph line that
18 says the settlement agreement, two above where it says DTSC
19 CLWA.

01:31PM 20 Q. (BY MR. BLUM:) All right. See where it says that
21 they've -- Whittaker has paid \$50 million for a treatment
22 system that's supposed to go for 30 years? Correct?

23 A. Well, I think that's saying they're committing to
24 pay for that. I don't know that it's all been spent.

01:32PM 25 Q. All right. Well, if you -- let's go to the next

1 paragraph. It talks about \$31 million has been reimbursed to
2 the agency for past expenses; correct?

3 A. Correct.

4 Q. And below it, another 5 to 10 million will be used
01:32PM 5 to construct wells and pipelines?

6 A. Yes.

7 Q. And another 10 million is available to allow water
8 supplies if additional treatment is necessary?

9 A. Correct.

01:32PM 10 Q. And also, didn't Whittaker commit to pay for the
11 construction of two entirely new wells?

12 A. Um, I think that's part of that 10 -- or part of
13 that 5 to 10 million that you're -- or maybe I'm confused
14 but --

01:32PM 15 Q. And part of it is to -- is to build and drill two
16 entirely new wells outside the plume of the perchlorate or the
17 VOCs; correct?

18 A. Two new replacement wells, yes.

19 Q. And Whittaker has committed to pay for that;
01:33PM 20 correct?

21 A. I believe there is an agreement, yes.

22 Q. It's about \$65 million in total; right?

23 A. Maybe. Yeah.

24 MR. BLUM: Okay. Thank you.

01:33PM 25 THE COURT: Mr. Gee, redirect?

REDIRECT EXAMINATION

BY MR. GEE:

Q. Mr. Abercrombie, I just have one simple follow-up question.

Did Whittaker only pay for the perchlorate treatment systems only after being sued?

A. The initial systems, yes.

Q. And we earlier talked about V-201, perchlorate treatment system. Was there a willingness to immediately fund the cost of -- to install the V-201 perchlorate treatment system?

A. No. It was a process. I mean, it took a number of years before we could get to the point of having the V-201 agreement in place that accomplished that.

MR. GEE: That's all I have.

THE COURT: Anything further?

MR. BLUM: Yes, sir.

RECROSS-EXAMINATION

BY MR. BLUM:

Q. Mr. Abercrombie, wasn't the holdup on the building of the V-201 the fact that the water agency wanted to have carte blanche in how they constructed it and Whittaker said, no, we'll -- we'll design it and we'll control it?

A. No. A lot of the holdup was that Whittaker wanted an agreement structured in a certain way to meet certain needs

1 they had with funding, I think, from the Department of Defense.

2 MR. BLUM: All right. Thank you.

3 THE COURT: You're excused, sir. Please watch your
4 step going down.

01:35PM 5 And we're still with the plaintiff's case. So who's
6 your next witness?

7 MR. RICHARD: Yes, Your Honor, thank you. Plaintiff
8 would call Mr. Rick -- or Dr. Rick Hughto to the stand. I
9 don't see him, so we'll run and get him.

01:35PM 10 He's right here so --

11 THE COURTROOM DEPUTY: Good afternoon, sir. Would
12 you please come forward.

13 Would you please walk around, and I'll swear you in
14 when you get up on the platform.

01:36PM 15 Please raise your right hand to be sworn.

16 Do you solemnly swear that the testimony you shall
17 give in the cause now before this Court shall be the truth, the
18 whole truth, and nothing but the truth, so help you God?

19 THE WITNESS: I do.

01:36PM 20 THE COURTROOM DEPUTY: Thank you. Please be seated.

21 Sir, for the record, would you please state your
22 name and then spell your last name.

23 THE WITNESS: Can I take this off, please?

24 My name is Richard Hughto, spelled H-u-g-h-t-o.

01:36PM 25 THE COURT: Mr. Richard.

1 MR. RICHARD: Oh, thank you, Your Honor.

2 RICHARD HUGHTO, PH.D.,

3 PLAINTIFF'S WITNESS, HAVING BEEN SWORN, TESTIFIED AS FOLLOWS:

4 **DIRECT EXAMINATION**

01:36PM 5 BY MR. RICHARD:

6 Q. Good afternoon, sir.

7 A. Good afternoon.

8 Q. You've been retained as an expert in this matter; is
9 that right?

01:36PM 10 A. Yes, I have.

11 Q. And before we talk about your work in this case,
12 Dr. Hughto, can you please describe for us a bit about your
13 educational background?

14 A. Yes. I received a Bachelor of Engineering in civil
01:37PM 15 and environmental engineering from Manhattan College in 1972.
16 I've received a Master's in environmental engineering from
17 Manhattan College also in 1973. And I received a Ph.D. in
18 water resource engineering from Cornell University. And I
19 finished there in 1979.

01:37PM 20 Q. Okay. And do you have any background in hydrology
21 or hydrogeology?

22 A. I do. I studied hydrology and hydrogeology in all
23 three levels of education that I had. I've been practicing in
24 hydrology in professional positions I've had since 1975.

01:37PM 25 Q. And what is hydrology, sir?

1 A. Hydrology is the study of movement -- of the
2 movement of water in the environment. One way to think about
3 it is the hydrologic cycle, which is water comes from the sky
4 as precipitation, falls on the earth, either will penetrate the
01:38PM 5 earth, percolating through the soil into groundwater, and
6 groundwater is just the movement of water under -- within the
7 soil below the ground surface. And also that the water that
8 falls from precipitation could run off and become surface water
9 in rivers, lakes, or other surface water bodies.

01:38PM 10 Q. Thank you.

11 And in addition to your degrees and Ph.D. from
12 Cornell University, can you please describe any professional
13 licenses and registrations you have in your field?

14 A. Yes. I've had a number of licenses over the years.
01:38PM 15 I've had professional engineering licenses in six different
16 states. I had a -- a license called a licensed site
17 professional in Massachusetts which is a specialty only in
18 Massachusetts which is a -- a license which you're allowed to
19 render decisions on the investigation and remediation of
01:39PM 20 contaminated sites in Massachusetts. In order to render
21 opinions on those types of sites to the State in Massachusetts,
22 you must have that license. And I've also been a certified
23 hydrologist by the American Institute of Hydrology.

24 THE COURT: Dr. Hughto, could I just have you move
01:39PM 25 maybe an inch or so away from the microphone. You're doing a

1 good job speaking into it so everyone can hear you, but you're
2 just a tad too close.

3 THE WITNESS: Okay.

4 THE COURT: Thank you.

01:39PM 5 MR. RICHARD: Thank you, Your Honor.

6 Q. (BY MR. RICHARD:) And how did you become -- did you
7 say a certified or a registered professional hydrologist?

8 A. It's certified.

9 Q. And how did you become a certified hydrologist?

01:39PM 10 A. There is a process for applying. Again, it's
11 through the American Institute of Hydrology, a nationwide
12 professional organization in which you fill an application out,
13 showing your -- your education and experience in the field.

14 And if you're -- you have sufficient experience,
01:40PM 15 according to those senior officials at the American Institute
16 of Hydrology, you can -- you'll be granted a license. If -- if
17 there's any question there, they also have an examination
18 process where applicants can take an examination much like the
19 professional engineering license and -- and gain the -- the
01:40PM 20 certification through that process.

21 I didn't take the exam. I was given the license
22 based on my education and experience.

23 Q. Have you taught any courses in your professional
24 field?

01:40PM 25 A. Yes. While I was in graduate school at Cornell, I

1 was -- I taught hydrology courses to juniors and seniors,
2 usually in the summer. I was also a teaching assistant in
3 other related type of courses. But the -- I was the principal
4 instructor in the hydrology course, I taught to the juniors and
01:40PM 5 seniors and, again, teaching the principles of the movement of
6 water in the environment and also discussing the movement of
7 contaminants in the environment.

8 Q. Did you teach students about things such as
9 hydrogeologic cycle that you mentioned earlier?

01:41PM 10 A. I did.

11 Q. Did you teach them about aquifers?

12 A. Yes, I have. Aquifers are -- are the bodies of --
13 the underground bodies of water called groundwater, and that
14 was a component of the course.

01:41PM 15 Q. Do you have any experience teaching or speaking on
16 something called "site assessments"?

17 A. I do.

18 Q. Can you briefly explain your experience in that
19 regard?

01:41PM 20 A. Yes. I've been involved in performing what we call
21 site assessments for around 40 years now. During that period
22 of time, I've been involved in instructing different groups how
23 to conduct site assessments, from people that I hired and
24 personally mentored and instructed to professional groups, like
01:41PM 25 the group -- group of LSPs, the group that I had the license

1 for in Massachusetts. Other -- other professional types of
2 groups of people who work in my industry. I have also done
3 programs for legal groups, groups of lawyers, groups of
4 bankers, insurance companies, and a number of other types of
5 organizations.

01:42PM

6 Q. And I should just ask you briefly, when -- can you
7 explain what you mean by "site assessment" in those various
8 teaching and presentations?

9 A. Yes. A site assessment is a multistep process with
10 the goal of determining whether there is the potential or there
11 is an existing contamination condition on a property. And in
12 going forward, if you do happen to find one, determining
13 whether it needs to be cleaned up or mitigated or -- and, if
14 so, determining a method that is consistent with the objectives
15 of your assessment.

01:42PM

16 I had multistep. The first step is -- is reviewing
17 records. It could be records -- records related to the
18 ownership of a property to what happened on the property. What
19 kind of operations were there? Was it manufacturing? Was it a
20 gas station? What -- what happened there over time and what
21 happened that could have impacted the environment on the
22 property? What could have impacted soil and groundwater
23 quality, just based on records?

01:43PM

24 Once a thorough record search is completed, if --
25 the next phase is to look into whether any of the conditions or

01:43PM

1 any of the history that may have led to contamination, in your
2 judgment as the assessor, whether any of those actually did
3 cause contamination, which in most cases calls for field
4 investigations, whether it's through the collection of --
01:43PM 5 collection of soil samples. It could be visual, could be
6 collecting groundwater samples, soil, vapor, air, water,
7 sediment, collecting samples to determine whether there is
8 contamination present.

9 If so, if you find contamination, the next step is
01:44PM 10 to determine the degree and the extent of the contamination.
11 How far did it go? Where is it vertically? Horizontally? In
12 what media? When I say "media," I mean water, soil, air. And
13 does it need to be cleaned up?

14 There is a process the government has set up to
01:44PM 15 determine whether the -- called a risk assessment in which
16 the -- you evaluate whether the contamination conditions you
17 have need to be cleaned up for the uses of the property you're
18 assessing.

19 And the final phase is the -- is the actual
01:44PM 20 mitigation of the problem, if that is necessary, at a site.

21 Q. And how long have you been involved in site
22 assessments, that multistep process you just described?

23 A. About 40 years.

24 Q. Can you tell us briefly, give us an overview of your
01:45PM 25 work history?

1 A. Yes. After I finished the Master's degree at
2 Manhattan College, I went to work for the Federal Government,
3 the Environmental Protection Agency in New York City. That
4 office governs New York, New Jersey, Puerto Rico, and the
01:45PM 5 Virgin Islands.

6 I was an engineer there for about two-and-a-half
7 years. And my primary responsibility was evaluating the
8 impacts of waste disposal practices on the land or in water on
9 the environment. It included actual field work to collect
01:45PM 10 samples, to characterize the environment, as well as to
11 mathematically model the impacts of contaminants on the
12 environment.

13 I left the EPA in December of 1975.

14 Q. Before we go on to the next position, just what was
01:45PM 15 your title with the EPA?

16 A. I was -- the government has ways of categorizing
17 people. And I was an environmental engineer. They have
18 numbers after it. I think I was a 7, a 9, and some other
19 numbers.

01:46PM 20 Q. You might just want to slow down just a little bit
21 for our court reporter. I'm sure she'll appreciate that.

22 Okay. After -- you worked at the EPA for -- what
23 did you say? Two or three years?

24 A. Two-and-a-half years.

01:46PM 25 Q. And then did you go back to grad school at some

1 point? Or what was your next position?

2 A. Yes. I left EPA, actually, on Christmas Eve of '75
3 and then in January began the Ph.D. program at Cornell. While
4 I was at Cornell, I was also working as a research assistant
01:46PM 5 for -- for a couple of different professors. I was a teaching
6 assistant, and I was -- I taught the hydrology course I talked
7 about during the summer and was a student as well.

8 Q. Okay. And then when did you get your Ph.D.?

9 A. I finished the work there in 1979, and the degree
01:46PM 10 was conferred a couple of years later when I finished all the
11 paperwork.

12 Q. And, again, your Ph.D. was in what specifically?

13 A. It was in water resource engineering.

14 Q. Okay. And where did you work -- what was your next
01:47PM 15 full-time position after 1979?

16 A. In August of 1979, I moved to Boston, went to work
17 for a company called Camp Dresser & McKee, also known as CDM.

18 Q. And what did you do there?

19 A. I was doing site assessment type work pretty much
01:47PM 20 from the beginning for different types of land development,
21 people under the enforcement programs of the Government, both
22 state and federal levels, and develop -- and was part of the
23 formation of a group to be the first consultants in the country
24 to study and clean up federal Superfund sites for the Federal
01:47PM 25 Government, procured a couple of multi-hundred-million-dollar

1 contracts to be studying Superfund sites around the country.

2 Q. So CDM at that time was a private business that had
3 a contract with -- with whom?

4 A. The contracts that I was referring to are with the
01:48PM 5 EPA and some with the Department of Defense, working on these
6 large federal Superfund sites.

7 Q. Okay. And how long were you with CDM doing these
8 site assessments for the EPA and others?

9 A. I was there just short of seven years.

01:48PM 10 Q. Okay. And then where did you work, sir?

11 A. I went to a small firm known as Rizzo Associates,
12 R-i-z-z-o, located in the Boston suburbs.

13 Q. And what did you do there?

14 A. I was hired there to develop a group at -- it was a
01:48PM 15 small consulting firm, and I was hired to develop a group to
16 form the site assessment group and to conduct the assessments
17 and also to conduct remediation of contaminated sites. At the
18 same time, I ultimately became the chief operating officer of
19 the company as well as doing the technical job that I had.

01:49PM 20 Q. Okay. And where was Rizzo located?

21 A. At first, a town called Natick, Massachusetts, but
22 12 miles west of downtown Boston.

23 Q. And can you give us an example of the type of site
24 assessments you worked on at either CDM or Rizzo Associates?

01:49PM 25 A. Would you like an example, like a case study type of

1 example?

2 Q. Sure.

3 A. And this is somewhat applicable to what we're
4 talking about here.

01:49PM 5 I worked for about a decade on a site in the Boston
6 suburbs that -- that made metal parts. They were -- they
7 extruded metal, which meant they took different types of metal,
8 primarily aluminum, and formed them into different shapes. And
9 they made dozens of different products.

01:49PM 10 One they made a lot of, if you ever took the covers
11 off of your light switches and plugs, there's an aluminum thing
12 behind where all the wires are, they made those. They made
13 millions of them. They made parts that went into dashboards
14 and doors of cars and things.

01:50PM 15 So what they did, they made these huge sheets of
16 aluminum and other metals and, through heat and cutting
17 processes, formed these different products that they made.

18 Oils were involved in that process. You need oils
19 when you're going to be doing the forming and the cutting. And
01:50PM 20 so the parts they made would end up being greasy and oily at
21 the end. And they had to remove the grease and oils from the
22 products.

23 So they use what's called a vapor degreaser, which
24 is a machine or a piece of equipment in which a chemical
01:50PM 25 solvent is used to remove the -- those greases from the -- from

1 the manufactured parts. Then those greases and oils end up
2 going into the solvent and -- which creates a sludge, which is
3 the oils and some of the used-up solvent that has to be managed
4 properly.

01:51PM

5 As a result of this operation and -- there are
6 different types of degreasers. The one there was what's called
7 a vapor degreaser, which also was at the Whittaker site. And
8 what vapor degreaser does is -- or how it operates is heat is
9 applied to the solvent which vaporizes it, much like you could

01:51PM

10 heat water and make it go into water vapor. And the part is
11 exposed to the vapor. And then that grease and oil dissolves,
12 and then the -- the solvent is recondensed and it takes out the
13 oils.

01:51PM

14 The problem at the site I'm talking about that I
15 worked up in the Boston area was that the -- this vapor
16 actually got outside the degreaser pretty consistently, would
17 get on the walls of the room, condense on the walls, form the
18 liquid, and it would go down the walls through the crack in the
19 flooring and go into the ground underneath.

01:52PM

20 Q. Let me --

21 A. They appeared not to have leaks in the system. They
22 didn't appear to have disposal waste. But from years of
23 investigation we did, we found that the only place that it
24 entered the environment was through the cracks in the floor.

01:52PM

25 And the -- so we had to figure out the extent of the source.

1 It migrated downward into the ground, into the
2 water, into bedrock under the soil. It migrated onto the
3 neighboring property which, unfortunately, had a water supply
4 well that belonged to the town where they resided.

01:52PM

5 The work I was doing there was -- was determining
6 the degree and extent of contamination, how it got from Point A
7 to Point B and evaluating means of mitigating the situation and
8 negotiating with a number of different parties who had interest
9 in it, including that town.

01:52PM

10 Q. So that was just my -- my next question was -- and
11 so you were personally involved in that extrusion manufacture
12 with the vapor degreaser that you just described?

13 A. Yes.

01:53PM

14 Q. Okay. Have you been involved in site assessments
15 for any military sites that made ammunition or other munitions?

16 A. Yes. Just related to the munitions of the military
17 type sites?

18 Q. Yes.

01:53PM

19 A. I was involved with two sites in California. One
20 was -- they were both involved in -- in rockets and missiles.
21 I can't recall because it's been a while whether there was any
22 ammunition, but there was rocket fuels and missiles involved,
23 manufactured at both locations.

01:53PM

24 One was a United Technologies facility,
25 United Technologies, a giant company that operates around the

1 world. And the other one was operated by Goodrich. More
2 famous for tires than they are for missiles.

3 Q. Okay. And those are projects, again, that you were
4 involved in the site assessment?

01:54PM 5 A. Yes. Excuse me. Yes.

6 Q. And have you been involved in any projects that
7 involved TCE and the historical use of TCE at a particular
8 site?

9 A. I've been involved with -- in many dozens of TCE
01:54PM 10 sites around the country over the last 40 years. There are
11 probably very few times when I didn't have some kind of a TCE
12 site on my dance card.

13 Q. And, first of all, what is TCE, in your experience?

14 A. TCE is trichloroethylene. It ends with e-n-e which
01:54PM 15 is an important distinction because there's going to be one
16 that ends in a-n-e discussed in this case. It is a chemical
17 solvent. The one that I did -- when I talked about the
18 extruding operation, they used TCE as their -- their degreasing
19 solvent.

01:54PM 20 It's a chemical that is heavier than water, somewhat
21 soluble in water, and it is a very effective degreaser. And in
22 many cases, in my experience, it's the degreaser of choice for
23 degreasing metal parts. And I found in different work I've
24 done related to the Department of Defense, it has been required
01:55PM 25 as a contract term to be used on -- in certain manufacturing.

1 Q. And I didn't ask you this earlier. When you were
2 with the EPA, did you have any experience with TCE?

3 A. Yes. There were some sites, particularly New Jersey
4 that I recall, in which we were evaluating the impacts of, I
01:55PM 5 believe, some waste disposal areas and industrial facilities in
6 New Jersey. And TCE was involved in some cases -- or it was
7 discovered in some cases and had -- and had to be -- the
8 situation had to be assessed in the manner that I've described
9 earlier.

01:55PM 10 Q. And so that -- you were with the EPA in the early
11 '70s?

12 A. Correct. I got there in mid '73 and left at the end
13 of '75.

14 Q. And so can you describe briefly whether you have any
01:56PM 15 experience with landfills?

16 A. Yes. I've been working with different types of
17 landfills for over -- going -- actually, back into the days I
18 was at EPA, which would go back pretty close to 50 years now.
19 And I categorize them sometimes as informal and formal
01:56PM 20 landfills.

21 Formal landfills would be something that was
22 designed to be a landfill, like maybe a municipality's landfill
23 where they would actually build a foundation possibly with a
24 liner, building leeching -- leeching collection equipment,
01:56PM 25 building a monitoring system, and also with plans for closure

1 in the end.

2 There are also what -- what I call informal
3 landfills where people just dispose of stuff. That was at the
4 Whittaker site. It's been done at other locations that I
01:57PM 5 worked at. And I've -- I've had to assess those types of
6 situations for many years as well.

7 Q. So what do you mean when you call it an informal
8 landfill?

9 A. That's my own term. It's one that wasn't designed
01:57PM 10 to be a landfill. There was no real engineering involved. It
11 was just a place where materials were -- were put.

12 Q. And do you have any experience, again, very briefly,
13 with groundwater modeling?

14 A. I do. I began studying groundwater modeling as part
01:57PM 15 of my master's program in 1972 and 1973. As I think I
16 described when I worked for EPA, following that time, part of
17 my job was to develop groundwater and surface water models to
18 evaluate contamination conditions.

19 My Ph.D. thesis was on modeling of ground and
01:58PM 20 surface water systems. And I've been involved on and off in
21 mathematical modeling and evaluation of contamination
22 conditions ever since.

23 Q. Has your work also touched on something called RCRA?

24 A. It has.

01:58PM 25 Q. And what is RCRA?

1 A. RCRA is the Resource Conservation and Recovery Act.

2 Q. And can you explain very briefly from the
3 perspective of an environmental professional like yourself what
4 RCRA is?

01:58PM

5 A. RCRA is a law that came out of the increasing
6 concern over the -- about environmental contamination during
7 the '50s, '60s, and '70s. The law was passed in 1976.
8 Regulations pursuant to it weren't promulgated until 1980.

01:59PM

9 And I like to think of two parts of RCRA, large
10 law -- large set of regulations to primary parts, the first
11 being what's called the cradle-to-grave tracking of waste
12 materials. Manufacturing operations -- RCRA applies to
13 manufacturing operations, not to abandoned landfills or
14 abandoned sites.

01:59PM

15 The -- and if waste materials are created, RCRA
16 provides for or requires that those be tracked, those waste
17 materials be tracked. Where are they created? Where are they
18 stored? How are they stored? In what quantities? In what
19 location in the facility? There are requirements where you
20 store your waste in the facility. You have to meet certain
21 government regulations. How long do you keep it there? You're
22 only allowed to have certain types of wastes in a location for
23 a certain amount of time. How is it disposed? Did it follow
24 regulations? Did it go to a licensed facility? What's the
25 paper trail for documenting that each one of those steps took

01:59PM

01:59PM

1 place? That's what I call the cradle-to-grave aspect.

2 The other aspect of RCRA is the -- the outside
3 environment at a RCRA site that -- this is -- this is --
4 really, it follows the site assessment process that I testified
02:00PM 5 about a little while ago.

6 There are -- there are areas on a RCRA site that may
7 have become contaminated as a result of the activities on the
8 site, that those would be investigated. And if contamination
9 is found to exist, a series of phases, like I described on the
02:00PM 10 site assessment, would be conducted to determine the extent,
11 whether it needs to be cleaned up and followed through to the
12 cleanup when necessary.

13 Q. And are there any key provisions or aspects of RCRA
14 that have impacted the work you've done over the last -- well,
02:00PM 15 since RCRA was adopted 40 years ago?

16 MR. BLUM: Vague as to time.

17 THE COURT: Overruled.

18 THE WITNESS: Aspects of the regulations or aspects
19 of implementation?

02:01PM 20 Q. (BY MR. RICHARD:) Sure. Just trying to give the
21 jury a sense of this big statute.

22 Are there any provisions that -- or aspects of it
23 that have impacted the work you do or that come up, you know,
24 in every case?

02:01PM 25 A. Yes. One thing that consistently comes up is that

1 the -- the process starts -- and this is the second process,
2 not the cradle-to-grave part I was talking about, the
3 assessment process -- with an application called a Part A
4 application in which the information is provided on those areas
02:01PM 5 to the site that are being or going to be investigated, and
6 then those different phases of assessment undertaken.

7 What is critical that I found over the years is that
8 the applicant be forthcoming and fully -- and disclose fully
9 the information related to the location, allowing -- like I
02:02PM 10 said, they're applying to the government -- which allows the
11 government to adequately regulate the -- regulate the site and
12 hopefully bring it to closure.

13 If the applicant, the industry, whoever it is, does
14 not give full disclosure, then the government doesn't have the
02:02PM 15 information it needs to -- to regulate the site properly. And
16 we want to be showing some documents, I believe, that
17 demonstrates that Whittaker did -- at its site did not fully
18 disclose information they had to the Government.

19 Q. My question is, so in -- how many times would you
02:02PM 20 say over the last 40 years you have become familiar with the
21 Part A application from the applicant, that is, the owner or
22 operator of a site with potential contamination?

23 A. Oh, that's really hard to estimate. Maybe a couple
24 dozen times.

02:03PM 25 Q. Okay. And in your experience, for the work you do,

1 what part of the application have you become most familiar
2 with?

3 A. The Part A application?

4 Q. Yes, sir.

02:03PM

5 A. It's disclosing the -- the use -- the types of
6 operations, uses of the property that could result in the
7 contamination of the property.

02:03PM

8 Q. Okay. And sometimes do those Part A applications
9 call for information about landfills or potential landfills at
10 the site?

11 A. They do.

12 Q. And in a site investigation, how do you keep track,
13 for the ones you've worked on, where the contamination or
14 suspected contamination might be?

02:03PM

15 A. How to keep track of it? I'm not sure I understand
16 the question. But it --

17 Q. Well, sure.

18 A. By going through the phased process I was talking
19 about.

02:03PM

20 Q. Okay. Let's start there.

21 Before you know whether there are areas that are
22 contaminated, what do you call those areas?

23 A. Oh, they could be called areas of concern. They
24 might be called salvage management units. It depends on where
02:04PM 25 you are and what process you're in when you're doing the

1 assessment. But under RCRA, they become salvage management
2 units. I think I understand the question now.

3 The different operations on a property or at a
4 facility that could lead to contamination, it could be
02:04PM 5 somewhere where there's a lagoon or impoundment. It could be a
6 landfill. It could be a place where waste was just dumped.
7 There are different types of operations that could lead to
8 contamination, and those are what -- the things that I would, I
9 guess, keep track of in assessing the site.

02:04PM 10 Q. You mentioned -- you used the phrase "areas of
11 concern." Is that what you were just describing?

12 A. Yes.

13 Q. Okay. And if we could -- I think rather than use a
14 foam board, we'll just call up Exhibit 123, which is a
02:05PM 15 stipulated exhibit.

16 (Exhibit 123 received into evidence.)

17 Q. (BY MR. RICHARD:) Can you see Exhibit 123, this
18 graphic called "Areas of Concern and RCRA Locations"?

19 A. I can, yes.

02:05PM 20 Q. And what is -- again, just very generally, what does
21 this type of map regarding areas of concern tell us when you're
22 involved in a site inspection?

23 A. Well, this would be a -- a very good product to have
24 at the end of what I was talking about, that first phase of
02:05PM 25 assessment, which is to -- having looked at the records related

1 to the facility -- I'm looking at the history of the
2 facility -- to identify areas that are -- as they're
3 categorized here, areas of concern.

02:05PM 4 In this case -- this is the Whittaker site, by the
5 way. And there are 70 -- there's numbers up to 77, but there
6 are couple that are 1-A, 1-B, 1-C. There are over 80 areas
7 here that are areas of concern based on the history and the
8 records that are available that deem -- that -- there was
9 enough concern to take the next step and determine whether or
02:06PM 10 not those actually resulted in contaminating the property.

11 Q. And -- okay. Thank you. And we'll return to that,
12 but we can take that down. Thanks.

13 And before we turn to the work you've done in this
14 case, can you tell us whether you've been recognized as an
02:06PM 15 expert in any state or federal courts in the country?

16 A. I have.

17 Q. And on more than one occasion?

18 A. Yes.

19 Q. And starting with federal courts, can you give us an
02:06PM 20 example of federal courts where you've testified as an expert
21 on environmental issues?

22 A. I believe these are all federal. I'm not sure
23 because, when I'm sitting in a room like this, it's -- it could
24 be federal. It could be state.

02:06PM 25 In Massachusetts and in a number of locations, I've

1 testified, including the federal court there in New York,
2 New Jersey, Ohio, Wisconsin, Chicago.

3 Q. Okay. And when were you first recognized as an
4 expert in a court?

02:07PM 5 A. First time I testified at trial was in the -- the
6 mid 1990s.

7 Q. Okay. And what types of issues were involved in
8 that?

9 A. That was a -- part of the case I was -- I was
02:07PM 10 testifying in was a -- the standard of care for a consultant --
11 conducting a site assessment, whether they -- their procedures
12 were consistent with the standard of care in the industry.

13 Q. Okay. So you've been investigating and sometimes
14 testifying about site assessment issues for many decades now?

02:07PM 15 A. Yes, I have.

16 Q. You're getting to be an old-timer. Sorry.

17 A. More gray hair up there every day.

18 Q. Can you tell us, sir, the work -- first of all, what
19 was your assignment or the scope of your assignment in this
02:08PM 20 particular case?

21 A. In this case, I was asked to look at, first, the
22 history of -- and this all relates to the Whittaker site. I
23 was asked to look at the history related to the operations on
24 the property, related to contamination of the property to the
02:08PM 25 extent that it existed.

1 I was also asked to look at the -- the data related
2 to soil -- primarily soil, groundwater, and soil vapor quality
3 from samples collected by consultants, primarily to Whittaker.

4 And finally, I was asked to evaluate the --
02:08PM 5 Whittaker's waste handling disposal practices.

6 Q. Okay. And can you tell us what -- what work you did
7 in this case to try to address those issues?

8 A. Yes. I -- I reviewed a lot of documents. I would
9 have liked to have more complete set of records, but I didn't.

02:09PM 10 So I -- I reviewed correspondence within Whittaker, between
11 Whittaker and regulatory agencies. I reviewed testimony of
12 Whittaker employees who were deposed as a part of the case. I
13 reviewed technical documents, meaning site assessment type
14 documents where they went through the different phases of site
02:09PM 15 assessments that I talked about from the -- from the evaluation
16 of the history right through collecting samples and doing
17 cleanup at the site. And I looked at historic literature
18 related to the -- the industry knowledge of the impacts of
19 waste disposal on the environment and particularly in Southern
02:10PM 20 California. And I also looked at some of the ordinances and
21 laws passed related to contamination.

22 Q. Okay. Did you do -- prepare any documents in this
23 case?

24 A. Yes. Well, after I did all those things I just said
02:10PM 25 and looked at all this information, I applied my training,

1 education, experience and prepared two expert reports in the
2 case.

02:10PM

3 Q. And you just said a minute ago you would have liked
4 to have more complete set of records. What did you mean in
5 that regard?

02:11PM

6 A. Many of the industrial site -- site assessment
7 projects I've been involved with, there are records available,
8 including things like what I just described, with the cradle to
9 grave and RCRA, of how wastes were generated, stored, handled,
10 disposed of. There are frequently records of what -- what
11 chemicals were purchased and how they're used in a facility,
12 where they're used in a facility, how they're stored, how
13 they're managed.

02:11PM

14 Q. You need to slow down, Dr. Hughto.

15 A. Sure.

16 Q. Just a little bit. I can't be the only one who's
17 having a hard time. So --

02:11PM

18 A. There are frequently operating records which an
19 operator of a facility, meaning the person who operates it, is
20 taking notes on what happens, you know, created these products
21 today, had a spill over here, purchased so much TCE today,
22 things like that, that allow you to track what went on over
23 time and understand what processes went on at different points
24 in time, what chemicals were used, what wastes were handled,
25 how they were handled, where, and so on.

02:11PM

1 I didn't have any of those. And based on what I
2 know, they were not produced so that I had them available to
3 me.

02:12PM 4 Q. And for other sites you've worked on involving
5 other, you know, businesses owning property that was suspected
6 of contamination that was involved in manufacturing, were you
7 able to observe operational records of those manufacturing
8 operations?

9 A. Yes.

02:12PM 10 Q. And would that sometimes include daily logs?

11 A. It would.

12 Q. And you mentioned purchase of chemicals. Would that
13 include purchase of chlorinated solvents?

14 A. Yes.

02:12PM 15 Q. And what types of records have you seen at other
16 facilities, other site assessments you've been involved in,
17 that would tell us what chlorinated solvents were purchased and
18 over what period of time? What are those records called?

02:12PM 19 A. Well, they could be purchase orders. They could be
20 invoices. They could be notes in a daily log to tell you that,
21 you know, 5,000 gallons of TCE arrived today. It could be any
22 of those, and there are probably other methods.

02:13PM 23 Q. Okay. And in your experience, when you're either
24 working for or you're involved in a site, do state and federal
25 regulators often ask for those same types of records you just

1 listed?

2 A. My experience has been that they do.

3 Q. And in the materials you reviewed in this case, did
4 you see requests from state and federal regulators for the same
02:13PM 5 types of records you just listed?

6 MR. BLUM: Vague.

7 THE COURT: Overruled.

8 You can answer.

9 THE WITNESS: I did see that type of request.

02:13PM 10 Q. (BY MR. RICHARD:) And what was the upshot of --
11 let's start with state regulators requesting records of
12 Whittaker.

13 A. As far as I know, the types of records that I just
14 described that I don't have, they didn't receive them either.

02:13PM 15 Q. And in the records you reviewed, was Whittaker ever
16 cited for failing to provide records to the state regulators?

17 A. I believe they were.

18 Q. And you mentioned -- I think you said disposal. But
19 for the solvents or other chemicals that would be disposed of
02:14PM 20 in the other site -- sites that you've assessed, what types of
21 records would reflect disposal practices?

22 A. Again, daily operating type logs that -- let's say,
23 created so much of this type of waste of today, put it into
24 barrels, put it in the hazardous waste storage area, things
02:14PM 25 like that.

1 Also, there are labels that go -- go into -- into
2 these types of storage areas. There are manifests, which are
3 formal documents, that track everywhere a waste goes once
4 it's going to leave a facility, going to its final resting
02:14PM 5 place. Those are all methods for finding out what happens with
6 waste.

7 Q. And did you see any of those daily logs or manifests
8 or other records that would tell us on a daily, weekly, monthly
9 basis or yearly basis what happened to the waste containing
02:15PM 10 chlorinated solvents at the Whittaker site?

11 A. I have not seen those types of records for the
12 Whittaker site.

13 Q. In your experience, would those types of records
14 have existed for a site making missiles and munitions and
02:15PM 15 things of that nature?

16 A. My opinion is those types of documents would have
17 existed in some form at -- for this type of -- for the
18 Whittaker facility.

19 Q. Okay. And in terms of the work you did in this
02:15PM 20 case, can you give us a sense of the time period you've -- you
21 tried to focus on?

22 A. Yes. I focused on the time period from the early
23 1940s through the -- as far as the operations are concerned,
24 through the closers -- closure of the facility in 1987.

02:16PM 25 Q. And for the period after the closure, did you review

1 any types of records regarding the Whittaker site?

2 A. Yes. I -- I reviewed a number of documents that
3 were generated and covered activities conducted after the
4 closure of the facility.

02:16PM 5 Q. Can you give us an example? You mentioned
6 something, SVE, earlier. What is that?

7 A. SVE is soil vapor extraction. That is a technique
8 for removing -- or remediating or removing volatile organic
9 compounds from soil at a property. Volatile organic compounds
02:16PM 10 are organics, obviously. But volatile means that they will
11 move into the air. Like when you fill the gas tank up in your
12 car, you start to smell the gas. That's because some of those
13 constituents in the gasoline are volatile. That's what you're
14 smelling. They got exposed to the atmosphere and --

02:17PM 15 THE REPORTER: Excuse me. Can you please slow down?

16 THE WITNESS: I'm sorry. They get exposed to the
17 atmosphere, they evaporate, which is what volatilizing is.

18 When there are volatile organic compounds like TCE,
19 PCE that were used at the Whittaker site are in soil, one
02:17PM 20 method -- and soil is about one-third air. If you take soil,
21 there is -- you have all the soil particles, but there's air
22 space in between the soil particles in -- roughly speaking, 30,
23 35 percent of that soil, depending on the type of soil, is air.

24 Those volatile -- let's just say TCE, the soil is
02:17PM 25 contaminated with TCE. Some of it will evaporate into what

1 they call pore spaces or air space in the soil.

2 Soil vapor extraction is a pretty simple technology.
3 All you do is suck the air out of the ground. The air has
4 those chemicals that volatilized in it. And as you take
02:18PM 5 contaminated air out, clean air moves in, you supply clean air
6 from the sides, and that becomes contaminated. And you keep
7 that vacuum process running until you reach an objective for
8 cleaning up that portion of the site.

9 Q. (BY MR. RICHARD:) And you said you looked at the
02:18PM 10 activities at the site from roughly the early 1940s until it
11 closed in 1987. What type of activities were occurring at the
12 site in terms of manufacturing? Let's start there.

13 A. Yes. There was manufacturing of ammunition for
14 World War II, to the military up through the Vietnam War.
02:18PM 15 There are also other -- there were fuses and switches related
16 to different products, defense products that were created
17 there. There was some fireworks and other, I'll say, exploding
18 devices that were manufactured.

19 An example was about a hundred million round --
02:19PM 20 rounds of ammunition, 20-millimeter rounds of ammunition were
21 created or manufactured at the facility. A hundred million of
22 them. 20 millimeters is a little less than an inch.

23 Q. Okay. And did you consider whether any of those
24 types of manufacturing processes generated waste or something
02:19PM 25 called industrial waste?

1 A. Yes. The -- part of the process is -- and again, in
2 creating the metal parts of ammunition, you have -- again,
3 actually, there was testimony that said that some of the --
4 some of the components that were utilized on the property were
02:19PM 5 manufactured elsewhere and shipped to the property in grease.
6 So these different components from offsite manufactured onsite
7 would have oils and greases on them that would need to be
8 degreased using a degreaser like I described earlier.

9 There also would be -- there were processes that --
02:20PM 10 were propellants that were in the missile products that were
11 created. The propellants make things go, so to speak. They
12 have -- they had some sort of an age limit on them where
13 they're not as effective after a certain age and was required
14 to change it out. Those -- that propellant, that fuel would be
02:20PM 15 taken out and, I assume, replaced. And that waste product
16 would have to be disposed.

17 And that, actually, process took -- took place on
18 the ground with the -- high-pressure water would be applied to
19 these -- to these parts to flush the propellant out.

02:20PM 20 Q. Does that particular process have a name, the one
21 you just --

22 A. Called "hog out."

23 Q. And were you generally familiar with the types of
24 environmental waste created by the processes at the Whittaker
02:21PM 25 site from your work in other cases and other site assessments?

1 A. Yes.

2 Q. And are you familiar with something called
3 "perchlorate"?

4 A. I am.

02:21PM 5 Q. And what is perchlorate?

6 A. Perchlorate is a -- the propellant I was just
7 talking about -- is a component of a propellant that I was just
8 talking about. It's an oxidizer. Some of these operate --
9 some of these propellants operate -- in the absence of oxygen,
02:21PM 10 it provides the oxygen. You need oxygen to make things go boom
11 or to explode. And perchlorate is a component of the
12 propellants that will do that.

13 Q. And for this same time period, the early '40s
14 through 1987, did you evaluate guidelines and rules for waste
02:21PM 15 handling in California?

16 A. I did.

17 Q. And what did you review in that regard?

18 A. I reviewed literature related to -- literature that
19 was created related to environmental contamination and impacts
02:22PM 20 on groundwater. So I reviewed some legislation that was
21 created in California.

22 Q. And can you give us an example, when you say
23 legislation, what you're referring to?

24 A. Yes. In -- there were two laws that were very early
02:22PM 25 on in 1907 and 1917 that were passed that required that, in

1 order to dispose of waste on soil that -- where -- that -- that
2 would allow this waste to percolate into underlying water
3 supply water, not very artfully stated, but that you -- that
4 would require a permit from the state.

02:22PM

5 Q. And that -- that pertained to, you said,
6 groundwater?

7 A. For -- yeah, waste that could cause percolation of
8 the waste materials into groundwater.

9 Q. And what's percolation?

02:23PM

10 A. Percolation is essentially just vertical migration
11 of -- of water into the ground. Pour a bucket of water on the
12 ground, it disappears because it goes down into the soil and
13 actually occupies those air spaces I was just talking about.

02:23PM

14 Q. So let's start there. For the period at the turn of
15 the last century, so around 1900, you know, plus or minus, at
16 that time, what -- what literature did you review regarding the
17 connection, if any, between waste on the ground and percolation
18 to the groundwater?

02:23PM

19 A. There is one paper, professional paper, gentleman's
20 last name is Shelton, that was published in 1899. And
21 Mr. Shelton was involved in the manufactured gas industry which
22 produces -- essentially took coal and made gas out of it to do
23 what we use natural gas for today. It's an industry that
24 creates a lot of waste and byproducts loaded with contaminants.

02:24PM

25 Mr. Shelton studied what the -- the nuisances and

1 the liabilities, as he states it, related to those -- to those
2 waste products in the environment.

3 And I'm just reading from my report here because I
4 don't commit everything to memory.

02:24PM

5 Some of the nuisances and potential liabilities that
6 he identified was pollution of private wells adjacent to a
7 property, pollution of state streams, pollution of rivers used
8 for water supply in cities, and emission of noxious fumes.

02:25PM

9 So in 1899, there was a professional paper by
10 somebody who has identified these types of nuisances and
11 potential liabilities related to waste disposal.

12 MR. BLUM: Your Honor, this is a narrative.

13 THE COURT: Sustained.

02:25PM

14 MR. RICHARD: I'll ask another question, but thank
15 you for that explanation.

16 Q. (BY MR. RICHARD:) Fast-forwarding to the -- to the
17 1940s. Was there other literature -- or '40s and '50s. Can
18 you summarize for us the other literature you reviewed, sir?

02:25PM

19 A. Yes. I have a number of different pieces of
20 literature that I'll -- would you like me to read from the
21 report some of these things? Want to put it on the screen?
22 How would you like to operate that?

02:25PM

23 Q. I think in the interest of time, just briefly give
24 us a sense of some of the different things you looked at in
25 terms of literature from the '30s, '40s, '50s, without going

1 into great detail.

2 A. Okay.

3 MR. BLUM: Your Honor, I would request if the
4 witness is reading from his report, that he tell us where.

02:26PM 5 Q. (BY MR. RICHARD:) Well, that's right. Can you do
6 that, sir?

7 A. I'm sorry. What was that?

8 Q. If you're going to cite to something in your report
9 that you didn't commit to memory, can you just let us know what
02:26PM 10 page of your report?

11 A. Sure. This is my original report, and I'm on
12 page 9.

13 Near the top, there's a paragraph that begins
14 "Thomas." Dr. Thomas, named Harold Thomas, was a professor at
02:26PM 15 Harvard, wrote a book called "The Conservation of Groundwater"
16 in which he was identifying -- he wrote the book in 1951. It
17 was published in 1951. So the work certainly precedes that
18 time.

19 And he discusses the -- that such -- the
02:26PM 20 contamination -- that "recharging the ground, such
21 contamination is likely to become more common unless adequate
22 precautions are taken to prevent recharge by contaminated
23 water." And in doing his work, he cited case studies in
24 California.

02:26PM 25 Again, I studied a lot of different literature to do

1 this, and I'm only going to cite here some of the things that
2 relate to Southern California, that there are more -- other
3 articles in publications than just these.

02:27PM 4 There's -- following paragraph, Counsel, the --
5 there was an article in a journal called *Wastes Engineering* in
6 1953 that called underground water more -- I'm sorry --
7 "pollution of underground water and more serious than that of
8 surface water because subterranean water movement is slow," and
9 it goes on from there.

02:27PM 10 That paper also said -- it was presented in an
11 article about Southern California conditions, including the
12 Santa Clara River, which is proximate to the Whittaker site.

13 Next one I'm going to mention is at the top of
14 page 11. It's a USGS study. The USGS is the United States
02:28PM 15 Geological Survey who for many decades have been the
16 Government's -- I think it's a government agency or
17 quasi-government agency that is an authority on geology,
18 hydrogeology that is a frequently used resource in our country.

02:28PM 19 Q. Is that a resource you've used in other engagements,
20 sir?

21 A. It is. And widely used not just by me but by people
22 in my industry across the country.

23 Q. Okay.

02:28PM 24 A. There was a study published in '63, 1963, about
25 groundwater contamination and legal controls in Michigan. And

1 the reason I'm mentioning it is that it also cites conditions
2 in Southern California.

3 Q. When you refer to conditions in Southern California,
4 what are you talking about?

02:28PM

5 A. That -- the paper was more about contamination and
6 legal controls in Michigan, but the author has also discussed
7 conditions in Southern California.

8 Q. Okay. And that's probably sufficient. If we need
9 to come back, I can let you know.

02:29PM

10 But can you give us a general sense as to how these
11 materials that you reviewed, those older laws and ordinances
12 and the literature and the like, how -- can you tell us what
13 your conclusions are with respect to how those studies and laws
14 impact your work in this case, in other words, your conclusions
15 as to appropriate waste handling practices at the Whittaker
16 site.

02:29PM

17 A. Yes. The -- by considering the knowledge in the
18 industry at the time and -- I know you said that was
19 sufficient, but there was one -- also one other reference
20 that --

02:29PM

21 MR. BLUM: Your Honor --

22 THE WITNESS: -- referenced --

23 THE COURT: Sustained.

24 Please answer his question.

02:29PM

25 THE WITNESS: Yes. That -- it was widely known to

1 industry, to the Government, and in the general public based on
2 the literature that I've reviewed, that -- that dumping waste
3 on the ground could impact groundwater and surface water. Laws
4 were passed beginning 1907 in California to address those
02:30PM 5 potential issues.

6 So at the -- and fast-forward to this 1940s to the
7 1987 period, Whittaker operations, at the Bermite-Whittaker
8 site, my opinion, the proper waste handling practices would be
9 not to place waste in the environment in a way that it could
02:30PM 10 impact -- directly impact the soils, groundwater and surface
11 water, methods such as dumping on the surface of the ground.

12 Q. (BY MR. RICHARD:) And did you see any evidence as
13 to Whittaker's own policy regarding dumping waste onto the
14 ground?

02:30PM 15 A. I did. At least two Whittaker employees, I believe
16 Mr. Luce, L-u-c-e, and Mr. Jisa, J-i-s-a, testified that
17 that -- that dumping of wastes and burying of wastes were --
18 were prohibited --

19 MR. BLUM: Objection, Your Honor. There's no
02:31PM 20 connection to what we have here.

21 THE COURT: Overruled.

22 Q. (BY MR. RICHARD:) So I was asking about evidence as
23 to Whittaker's policy regarding waste handling.

24 A. And there was one more. There's -- several
02:31PM 25 witnesses testified that they followed the DOD, Department of

1 Defense, manual for practices. The 1968 manual, DOD manual for
2 practices -- I believe "prohibited" is the correct word -- of
3 dumping waste materials on the ground surface.

02:32PM 4 Q. Okay. And did you review that DOD manual or parts
5 of it for your work in this case?

6 A. I did.

7 Q. And did that also address percolation or the
8 potential from percolation from the ground to -- groundwater
9 sources of drinking water?

02:32PM 10 A. Yes.

11 Q. Did you find any evidence that Whittaker had an
12 actual environmental manual?

13 A. I have seen no environmental manual that was
14 published by Whittaker itself.

02:32PM 15 Q. Did you see any evidence that they had no such
16 manual?

17 A. Have I seen evidence that they had no manual?

18 THE COURT: Rephrase the question.

19 MR. RICHARD: Yes, Your Honor.

02:32PM 20 Q. (BY MR. RICHARD:) You personally didn't see any
21 evidence of Whittaker ever having an environmental manual. Did
22 they have any other types of manuals that you reviewed?

23 A. Well, I -- I think I testified a little bit earlier
24 about things that I did not see. I have not seen any manuals
02:33PM 25 for the handling of waste that I can recall that were authored

1 by Whittaker.

2 Q. Okay. And before we rest for the afternoon or take
3 a break, can you tell us, now that you've described your
4 background and the various materials you reviewed in this case,
02:33PM 5 can you just share with us the areas where you reached
6 conclusions without going into detail? Just give us a sense of
7 the areas that you reached conclusions on regarding the
8 Whittaker site.

9 A. Yes. I've reached conclusions on the waste handling
02:33PM 10 practices of Whittaker, on the correlation of the environmental
11 data, the results of the soil and groundwater sampling with the
12 waste handling practices, and also I've drawn conclusions
13 related to Whittaker's interactions with the regulatory
14 agencies.

02:34PM 15 Q. Okay. And with respect to that first area,
16 Whittaker's waste handling practices, can you -- did you reach
17 any conclusions as to whether Whittaker followed its own policy
18 for waste handling?

19 THE COURT: We're actually going to break at this
02:34PM 20 point.

21 So it's now past 2:30. It's 2:34. So we are going
22 to break for the day.

23 Please remember, do not speak to anyone about the
24 case, the people, or the subject matter involved. Continue to
02:34PM 25 keep an open mind.

1 Please return tomorrow at 8:30 when we will start,
2 so before 8:30 so that we can start at 8:30 sharp. We'll see
3 you then. Thank you.

02:34PM

4 THE COURTROOM DEPUTY: All rise for the jury,
5 please.

6 (Out of the presence of the jury:)

7 THE COURT: Please be seated.

8 We're outside the presence of the jury.

9 You may step down, Dr. Hughto.

02:35PM

10 We will begin our afternoon session in 15 minutes.

11 So we'll break for 15 minutes. It's now 2:35. We'll --

12 everyone's ordered back here at 2:50.

13 And the first thing we're going to talk about and
14 maybe the only thing we'll talk about is the bench trial. And
02:35PM 15 if there's evidence to be presented to the Court this
16 afternoon, the plaintiff will start by presenting that
17 evidence.

18 If there's not, we'll talk about making sure that
19 you do have witnesses available starting fairly soon so that we
02:35PM 20 can fit that in and make the afternoon productive.

21 Also, I believe I only have the witnesses that
22 extend through Dr. Hughto; although, I haven't fully checked.
23 Do we have additional witness and witness binders with
24 challenged or even unchallenged evidence?

02:36PM

25 MR. RICHARD: Yes, Your Honor. We've identified, I

1 think, Mr. Lardiere. We've identified the video for
2 Mr. Peloquin.

3 THE COURT: Have you provided those -- those binders
4 to Mr. Cruz?

02:36PM 5 MR. RICHARD: I haven't personally. I believe
6 they -- I'd have to check.

7 THE COURT: All right. So who are the additional
8 witnesses that you have prepared and provided binders for?

9 MR. RICHARD: I believe it's Mr. Lardiere and then
02:36PM 10 we have a binder for Mr. Peloquin. I don't know if that was
11 included in the binder for Mr. Lardiere.

12 THE COURT: And when do you anticipate getting to
13 your next witness after Dr. Hughto?

14 MR. RICHARD: Tomorrow afternoon.

02:37PM 15 THE COURT: All right. And your next witness is
16 Eric Lardiere?

17 MR. RICHARD: Yes.

18 THE COURT: All right. We'll be in recess, as I've
19 indicated, until 2:50. I'll see everyone in a few minutes.

02:37PM 20 MR. RICHARD: Thank you, Your Honor.

21 (Break taken.)

22 THE COURT: On the record in Santa Clarita Valley
23 Water Agency versus Whittaker. We're outside the presence of
24 the jury. We have counsel representing both parties.

03:02PM 25 The first item of business is the bench trial. And

03:02PM

1 the parties did provide the Court, after we had a discussion
2 about the contours of the bench trial, with their respective
3 positions. And it appears that the parties are not in
4 agreement as to the scope of the bench trial. And it appears
5 the only thing they agree upon is that there will be two
6 witnesses, Jeffrey Zelikson and Peter Mesard, M-e-s-a-r-d, who
7 would testify at the bench trial. And then there is disputes,
8 as I understand it, about Daniel Shoup, Steven Luis, or Luis,
9 Duane Steffey, S-t-e-f-f-e-y, Gary Hokkanen, H-o-k-k-a-n-e-n,
10 and Richard Slade.

03:03PM

11 So what I'm inclined to do, I'll hear from the
12 parties, is just to start having these witnesses come in the
13 afternoon and we'll have a discussion each day about who's --
14 whether I'm going to let a witness testify in the scope of it.

03:03PM

15 It appears the parties are continuing to fight over the Court's
16 orders concerning the JMIL, at least with regard to
17 Daniel Shoup.

18 So tell me when Mr. Zelikson, whether he's available
19 tomorrow afternoon.

03:03PM

20 MR. RICHARD: He is not available because he's
21 having -- he's in the hospital with a medical procedure
22 tomorrow. We just verified that with him. He previously told
23 us he wasn't available, and I just confirmed why.

03:04PM

24 So the only question -- so in terms of plaintiff's
25 case, Your Honor, Mr. -- there's no dispute as to the witnesses

1 we would call in our case. So unless Your Honor is
2 anticipating having defendants call, you know, the NCP
3 witnesses or the bench portion while we're still in plaintiff's
4 portion of the trial case --

03:04PM

5 THE COURT: I am inclined to do that.

6 MR. RICHARD: Oh. Okay. Then, you know, for the
7 other witnesses beyond Mr. Mesard, those witnesses have some
8 testimony that is probably relevant to both the jury and the
9 bench. I don't have strong feelings if they want to present

03:04PM

10 information to the jury that doesn't relate to the common law
11 claims, you know, that's up to the Court and counsel.

12 The more serious concern we have is that if the
13 witnesses have already been -- like Mr. Shoup, you know,
14 precluded from testifying, absent some further showing that
15 hasn't been made, that's my only concern, is let's stay within
16 the lines of -- of the Court's prior rulings and not try to
17 creep around those.

03:05PM

18 That concern diminishes or evaporates if those
19 witnesses are solely testifying. In other words, if they're
20 solely testifying in the bench portion of the case, the fact
21 that Your Honor excluded Mr. Shoup, for example, and his
22 speculations, if they want to present that evidence to the
23 Court, you know, I have no objection to that. But to -- to
24 resuscitate that and present that to the jury. So that's --

03:05PM

03:05PM

25 THE COURT: Let me turn to Mr. Blum.

1 I am not going to be inclined to give further
2 consideration to issues that I've already decided. And so what
3 I am -- Mr. Blum, don't interrupt the Court.

4 MR. BLUM: Sorry.

03:05PM

5 THE COURT: So it doesn't mean that I'm unwilling to
6 have you present these witnesses to the Court. And you can
7 explain, for example, with Daniel Shoup why he does fit within
8 the scope of the Court's order.

03:06PM

9 I didn't entirely preclude Mr. Shoup. I left open
10 the possibility that you would have a chance to provide the
11 Court with an offer of proof to show that there was additional
12 information that he could provide that would enable his
13 testimony to be admitted. But you're going to have to do that
14 by bringing him into court, and you're going to have to bring
15 him into court pretty soon.

03:06PM

16 MR. BLUM: Your Honor, I'm not sure what the problem
17 is. They're the ones that listed all these other ones, not me.
18 I have no intent to call Mr. Shoup right now or -- or
19 Mr. Hokkanen in the bench trial. That's not my designation.

03:06PM

20 The only person we intend to call is Mr. Mesard. And I told
21 plaintiff's counsel that the only reason Mr. Shoup was on the
22 list was because there was an opening depending upon an offer
23 of proof and that we would tell them if we thought that there's
24 been a sufficient foundation. We haven't told them because --

03:07PM

25 THE COURT: All right. Let's do it this way to be

1 most productive. So both sides -- or the plaintiff intends to
2 introduce Jeffrey Zelikson only in the bench-only portion of
3 the trial. Correct, Mr. Richard?

4 MR. RICHARD: Yes, Your Honor.

03:07PM

5 THE COURT: And, Mr. Blum, you intend to introduce
6 Peter Mesard as essentially the counterweight to Mr. Zelikson.
7 Is that right?

8 MR. BLUM: Yes, sir.

03:07PM

9 THE COURT: Do you anticipate calling anybody else
10 in the bench trial other than Mr. Mesard?

11 MR. BLUM: Your Honor, with the only caveat, if
12 there's a change in the way the evidence and evidentiary
13 rulings have gone, but absent that, no.

03:08PM

14 THE COURT: You'll have to explain that to me
15 because this is the bench trial. And --

16 MR. BLUM: I understand.

03:08PM

17 THE COURT: -- we know what the issues are. So
18 there's nothing that should occur, I think, in the course of
19 the jury trial that would impact the evidence that will be
20 presented to me. But maybe I'm missing something, which is
21 possible that you can explain.

03:08PM

22 MR. BLUM: No, Your Honor. There's a lot of the
23 issues in the issues that you have to resolve that overlap with
24 the issues the jury has to resolve, like all the causation
25 evidence and things of that sort. You have a causation

1 determination to make independently of the jury.

2 And issues such that would relate to allocation, a
3 lot of them are being presented to the jury which relate to
4 you. But we believe that all of the evidence, other than the
03:08PM 5 NCP, overlaps. And there's no need to call somebody only for
6 the bench trial because you're going to hear it in the jury
7 trial part.

8 THE COURT: All right. Have you had sufficient
9 time, Mr. Blum, to think through all the possibilities that you
03:09PM 10 can possibly think through to see if something could come up in
11 the jury portion of the trial that would change whether you
12 wish to present someone other than Peter Mesard at the bench
13 trial?

14 MR. BLUM: Your Honor, I'm trying to answer this
03:09PM 15 question and not think that I'm being sarcastic.

16 THE COURT: No, I'm -- it's a genuine question to
17 find out whether you're in a position to give me your best
18 response or whether you would rather take the evening to
19 consider it and give me your best response.

03:09PM 20 Because you will face the question that you'll want
21 to avoid, that if you do call or ask me -- ask to call someone
22 other than Peter Mesard, you're going to have to explain to me
23 why you could not have anticipated the witness. And I'm going
24 to expect you to give me a good faith response that you thought
03:10PM 25 it through.

1 Frankly, I find it -- I would find it surprising
2 from what little I know of you and what I know of the amount of
3 time that you all have spent on this case that something is
4 going to escape your intellectual grasp of what may occur.

03:10PM

5 MR. BLUM: Your Honor, I wish I -- well, I hope to
6 live up to your expectations, but I want the night to think
7 about it.

8 THE COURT: That's fine.

03:10PM

9 All right. Then there's really nothing further to
10 talk about with regard to the bench plan.

11 I have looked at the objections to the two exhibits
12 with regard to Mr. Lardiere's testimony. And so they are
13 Exhibit 26 and Exhibit 486. And so let me start with 26. And
14 let me hear from the plaintiff with respect to the foundation
15 for using this document with Mr. Lardiere.

03:11PM

16 MR. RICHARD: Oh. My --

17 THE COURT: And just to focus this, this document
18 seems to me generally to be an admissible document. The
19 objection that I'm focusing on is that Mr. Lardiere has no
20 personal knowledge about this document. I believe that is --

03:11PM

21 MR. RICHARD: Are we talking about the same
22 document?

23 THE COURT: You know what? I've confused -- I was
24 going off of memory.

03:11PM

25 So let's talk about 486 since that's the one I'm

1 referring to. Forgive me.

2 MR. RICHARD: All right. No problem, Your Honor.

3 THE COURT: So this is the Consent Order. It was
4 signed by a Whittaker officer. And so I'll hear from Mr. Blum
03:12PM 5 as to what the objection is besides personal knowledge. But
6 the personal knowledge objection is at least of -- a question
7 for the Court.

8 MR. RICHARD: Sure. I appreciate that, Your Honor.

9 And if there were no other document signed by or
03:12PM 10 provided to Mr. Lardiere or mentioning the 1994 order, I
11 wouldn't be showing it to him. But he -- both the 2002
12 Imminent and Substantial Endangerment Order, which he is
13 familiar with, he was working there, he attached it to a
14 declaration and said he had reviewed it and, et cetera, that
03:12PM 15 document expressly refers to the 1994 Consent Order, as does
16 the 2007 settlement agreement that Mr. Lardiere signed.

17 So I have -- I will -- you know, I know how to lay a
18 foundation. And if I didn't think I could lay a foundation, I
19 wouldn't have it on my list.

03:13PM 20 THE COURT: Well, I think that's helpful.

21 So you intend to pursue with Mr. Lardiere whether,
22 in fact, he does have a foundation to testify about this
23 document. If so, you'll use it with him. If not, you'll try
24 to get it in through some other witness.

03:13PM 25 MR. RICHARD: Exactly.

1 THE COURT: Do you have another witness who will be
2 able to sponsor this document?

3 MR. RICHARD: I think it's also in Dr. Hughto's
4 witness list.

03:13PM

5 THE COURT: All right. So let me hear, Mr. Blum,
6 why I shouldn't permit this document, 486, with the proviso
7 just discussed.

03:13PM

8 MR. BLUM: Your Honor, the -- if the only question
9 to Mr. Lardiere is have you seen this, that's basically, you
10 know, no harm, no foul in reality. It really doesn't matter.
11 But if they're admitting it for the truth of the matter for the
12 factual assertions within the document itself, that's a whole
13 other issue.

03:14PM

14 THE COURT: Let's assume that that's the purpose,
15 that Mr. Richard seeks to introduce this document. And before
16 you get there, because I don't want to fall into this trap
17 again, is Mr. Richard correct that this document has been
18 discussed with Dr. Hughto? Dr. Hughto has considered this
19 document. You expect Dr. Hughto has relied upon this document.

03:14PM

20 MR. BLUM: That's my recollection, Your Honor.

21 THE COURT: All right. So tell me what you're
22 practically fighting over.

03:14PM

23 MR. BLUM: Well, the difference is -- there's a
24 difference between Mr. Hughto saying I've relied upon this and
25 asking Mr. Lardiere what he knows about it when it's obvious he

1 can't know anything about it. He's not allowed to rely upon
2 hearsay. Mr. Hughto is.

3 THE COURT: No. There's a difference here, I think,
4 or maybe I'm not tracking you, Mr. Blum, is that if, in fact,
03:15PM 5 there's a foundation to discuss the document with Mr. Lardiere,
6 then this is a corporate document. This is a party document.
7 It's going to be a document that will be admitted into
8 evidence.

9 So what is the evidentiary objection in that regard,
03:15PM 10 assuming a foundation?

11 MR. BLUM: Specific one is the parts relating to the
12 search warrant have not been excised.

13 THE COURT: Well, they will need to be excised.

14 MR. BLUM: And there's other -- and the allegations
03:15PM 15 in the Consent Order don't specifically relate to the question
16 at hand. Again, it's a broad brush issue.

17 THE COURT: I'm sure you spoke with Mr. Gallagher,
18 and I do not intend to rehash the discussion about
19 Mr. Hughto -- or Dr. Hughto and all of the exhibits and all of
03:15PM 20 the issues that we have been addressing for a long period of
21 time. I've said my piece on that issue.

22 So if what you're saying is there are other things
23 in here beyond strictly TCE, PCE, and perchlorate, I'm no
24 longer looking on the 403 scale as that counting towards undue
03:16PM 25 prejudice because all of that information is out there

1 presented to the jury and not just by one side but also by the
2 other side. And certainly, it's been presented to the jury
3 without objection, that is, the stipulated exhibits.

4 So is that the scope of your argument?

03:16PM

5 MR. BLUM: And the excising of issues relating to
6 the search warrant and the criminal investigation.

7 THE COURT: Yes. And that clearly must be excised.
8 And I can't say this in strong enough terms to the plaintiff.

03:17PM

9 I do not expect to see any reference in any document that is
10 received into evidence relating to a criminal investigation, a
11 search warrant, et cetera. In my view, that still raises a
12 substantial 403 issue.

13 And for the parties' benefit and for the benefit of
14 the record, the law with respect to 404(b) as it applies to
15 corporations has not been, as far as I know, fully decided in
16 the Ninth Circuit, by the Ninth Circuit. There may be some
17 District Court authority unpublished that addresses the issue.

03:17PM

18 There's circuit authority that I'm aware of outside of the
19 Ninth Circuit that acknowledges 404(b) applies to corporate
20 entities.

03:17PM

21 I haven't had occasion, nor do I feel the need, to
22 explore the depths of that issue. I'm inclined to believe it
23 does apply to corporations, but that's an inclination rather
24 than an informed view.

03:18PM

25 In my view, ultimately the reason I don't need to

1 address that issue dispositively is because even if 404(b) does
2 not apply to corporate entities, Rule 403 still does. And so
3 in my view, it's largely in this case an academic issue.

4 The question for the Court is whether or not the
03:18PM 5 potential for undue prejudice, as well as undue consumption of
6 time, substantially outweighs the probative value. And I am
7 persuaded still that in the case of a criminal investigation,
8 search warrants and the like, it most certainly does.

9 In my view, it would be unfair to Whittaker to
03:18PM 10 introduce that evidence without opening the door to further
11 evidence as to every aspect of the potential investigation, the
12 investigation, the search warrant. And that not only will
13 consume a lot of time, but it is quite likely, in my view, to
14 create undue prejudice to Whittaker.

03:19PM 15 So that, to me, is a clear line. I've been clear
16 about it. Nothing that I have heard since then has altered my
17 calculation.

18 What has altered my calculation on 403 is that I was
19 being asked essentially to take a surgical knife to carve out
03:19PM 20 things other than the VOCs that I referred to, TCE, PCE, and
21 perchlorate, only to later find out that the parties have
22 agreed, in part, presumably because there are internal memos
23 from Whittaker, that there are all of these references to
24 indiscriminate dumping, burying, different sites across the
03:20PM 25 site where there was waste disposal, not all of which

1 necessarily refers to TCE, PCE, and perchlorate.

2 And so, again, I've concluded on that and have
3 provided the Court's ruling this morning. And I do just, once
4 again, remind you, Mr. Richard, that I am expecting that you
03:20PM 5 will live up to your responsibilities and make sure that you
6 still, when you're introducing evidence, have a good faith
7 basis to connect up the issues in this case and the evidence
8 that you're producing.

9 MR. RICHARD: Yes, Your Honor. Just one quick point
03:20PM 10 or two quick points.

11 On the 1994 order, it would save some back and forth
12 if the portions to be excised or whited out could -- if they
13 send that over to us, I'm happy to look at it. If I try to
14 find all those references -- in other words, this is their
03:21PM 15 concern. If they want to send over a redacted copy --

16 THE COURT: I am going to do that only because I
17 view this of such concern that I don't want there to be an
18 error made on the part of the plaintiff. So for that reason --
19 and I think it would only be through human error. I can't
03:21PM 20 imagine they would directly violate the Court's instruction.

21 So the request is granted.

22 MR. RICHARD: Thank you.

23 And I would note that in reviewing one of the trial
24 exhibits, there is a reference -- this document has not yet
03:21PM 25 been published and defendants haven't flagged it -- but I

1 believe Exhibit No. 1 has one reference either to the search
2 warrant or something.

03:21PM 3 So I would urge that if -- rather -- if there's a
4 concern, you know -- I have never challenged Your Honor's
5 inclination, ruling, admonitions regarding the search warrant
6 or the criminal investigation. I've never challenged that or
7 argued with Your Honor. I understand it's a bright line, and
8 it makes sense.

03:22PM 9 So there, I just waived that issue on appeal as
10 well.

11 What I don't want, though, is the responsibility
12 necessarily to redact documents that they had already
13 stipulated to that may have an offhand reference that we didn't
14 catch. Some of these documents, as Your Honor saw, 781 --

03:22PM 15 THE COURT: Let me just interject.

16 MR. RICHARD: Thank you.

17 THE COURT: It is not your responsibility. I am
18 going to put that responsibility on the defense since they have
19 the greatest incentive to make sure that there is no mistake,
03:22PM 20 there is no error.

21 So by all means, Mr. Blum, if -- you'll have some
22 time, I know there's a lot to do, but put whatever resources
23 you think are necessary. And before -- before we actually give
24 the exhibits over to the jury -- so that will be at least some
03:23PM 25 time -- if you identify any reference that should be redacted,

1 it will get redacted and replaced.

2 MR. BLUM: Yes, sir.

3 THE COURT: And the last document -- and I'll let
4 you go, I know you have a few other things to do, as do I -- is
03:23PM 5 Exhibit 26. And let me understand from you, Mr. Richard, what
6 is this being introduced for?

7 MR. RICHARD: So this is a letter that became a
8 whole lot more relevant after Mr. Blum's opening statement
9 yesterday where he told the jury several times that my client
03:23PM 10 would rather litigate than investigate and that they fully
11 accept responsibility for perchlorate. He said that over and
12 over.

13 THE COURT: It is clearly a theme.

14 MR. RICHARD: Right. And so here we have a letter
03:23PM 15 to Mr. Lardiere saying we have contamination, please pay for
16 treatment of perchlorate and other contaminants. And it's
17 written from the general manager who's here. The reference to
18 April Jacobs is just a cover e-mail. And so Mr. Lardiere gets
19 a letter.

03:24PM 20 I thought we had already stipulated to this because
21 it says stipulated as modified and we modified it to remove any
22 references to insurance. So I was taken a little aback to see
23 it popping up again. But as redacted, I mean, it's absolutely
24 relevant. It goes to rebut 30 minutes of his opening
03:24PM 25 statement.

1 THE COURT: All right. Let me hear from you,
2 Mr. Blum. I don't know that it necessarily has the full thrust
3 that -- that Mr. Richard suggests, but wouldn't that be for the
4 jury to decide?

03:24PM

5 MR. BLUM: No. It's a demand for settlement. It's
6 a mediation privilege. It's black letter law, Your Honor. It
7 doesn't matter what it says, it can't be used in the case here.

03:25PM

8 THE COURT: Well, first of all, as I'm sure you
9 know, there are exceptions to -- to that rule. But so tell me
10 how is the settlement agreement -- there have been references
11 to settlement agreements in this case. So explain to me how
12 all of that got in.

13 MR. BLUM: Because we've agreed on those.

14 THE COURT: All right.

03:25PM

15 MR. BLUM: Each side had -- believes that there
16 should be a reason why they want to use it, but we don't agree
17 on this.

18 THE COURT: And why don't you agree on this?

03:25PM

19 MR. BLUM: Because the -- a demand is basically
20 that, just a demand. And it's -- and it's the basis as to why
21 there is a mediation privilege at all. That's why we don't
22 want it in.

23 THE COURT: Well, the rule, as you know, is more
24 limited than you're suggesting.

03:25PM

25 MR. BLUM: I understand. Nothing is ever as broad

1 as we hope it is.

2 THE COURT: But it's also -- it serves a particular
3 purpose. And here, this is being offered to respond to a theme
4 that is a substantial theme that you have suggested in this
03:26PM 5 case. And so if it were so that the water agency throughout
6 made numerous overtures to avoid litigation with you or your
7 client, you're saying that you could tell the jury that they
8 just wanted to litigate, they didn't want to actually do -- in
9 good faith try to resolve this, they were only interested in
03:26PM 10 litigating and they can't introduce anything in response to
11 that?

12 MR. BLUM: No, they can produce lots of stuff in
13 response to it. For instance, Your Honor -- so the -- the
14 response that we would have theoretically to this letter is why
03:26PM 15 this demand was unreasonable. So -- and then they're going to
16 come back with, yes, it was reasonable and we're going to start
17 litigating the negotiations.

18 THE COURT: But isn't that actually relevant? Not
19 that -- not that you -- not that you get into the negotiations.
03:27PM 20 The Court can't see the relevance of that. But isn't that
21 possibly a response to your theme? I'm not saying it's
22 correct. I have no particular view on this matter. But that
23 perhaps they thought, you know what? We have to litigate
24 because we have a history here with -- with Whittaker dragging
03:27PM 25 their feet. The only way they're ever going to do anything is

1 if we sue them.

2 MR. BLUM: But they can say that and they can say
3 they made a demand. I have no problem with that. But bringing
4 in the -- all the correspondence, the -- the retort would be we
03:27PM 5 got this. It was unreasonable. And the reasonable question to
6 that is, well, why was it unreasonable? And now we're off --
7 now we're off on the issue of the negotiations.

8 THE COURT: All right. Let me hear from
9 Mr. Richard.

03:27PM 10 MR. RICHARD: There is no question, Your Honor, that
11 during our meet and confer two months ago, we reached an
12 agreement and that agreement is reflected in our mutual joint
13 list, stipulated as to modified exhibit. We removed the
14 references to the insurance carrier. We had this discussion.
03:28PM 15 I don't know why we're discussing this.

16 But to answer his question, there were no
17 negotiations because Mr. Lardiere ignored the letter. So
18 Mr. Blum is talking about what ifs, that tomorrow 20 minutes
19 into Mr. Lardiere's examination will become clear.

03:28PM 20 So it should be admitted. It's -- this is one where
21 it would have to be pretty prejudicial not to allow me to rebut
22 the major theme that he raised. But we did have a stipulation,
23 which is why it's a modified redacted one-page letter.

24 THE COURT: So that's fine. Thank you.

03:28PM 25 Lastly with you, Mr. Blum, I now have Rule 408 up.

1 And it says, "Evidence of the following is not admissible on
2 behalf of any party, either to prove or disprove the validity
3 or amount of a disputed claim or to impeach by a prior
4 inconsistent statement or a contradiction." And then it goes
03:29PM 5 on to discuss the contents of what is protected.

6 It doesn't appear to me that this is being offered
7 either to prove or disprove the validity or amount of a
8 disputed claim but only to express that there were overtures
9 made and resistance to paying by Whittaker. So why is this not
03:29PM 10 within the exception or exclusion of Rule 408?

11 MR. BLUM: Your Honor, I -- I mean, I'll be real
12 frank. I've made my argument. I understand what the Court's
13 saying --

14 THE COURT: Fair enough.

03:29PM 15 MR. BLUM: -- or anticipated what the Court's going
16 to say.

17 THE COURT: Fair enough. I'm giving you the fair
18 opportunity. I understand if you're submitting, you're
19 submitting.

03:30PM 20 I am going to overrule the objection. I do think
21 this falls outside of Rule 408. I do think that Whittaker has
22 made a very substantial theme in this case that the whole
23 purpose in bringing this lawsuit, that is, that the whole
24 purpose in what occurred with the regulators even was for
03:30PM 25 purposes of building up this lawsuit to make Whittaker pay for

1 things that it doesn't owe. And obviously, I'm not either
2 embracing that or saying that is -- is incorrect, but that is
3 an issue. It is a theme. And the jury, I think, is entitled
4 to see a response if there is one.

03:30PM

5 So for that reason, the objection is overruled.

6 Before we conclude for the afternoon, I did now
7 check further and that is the only -- or the last of the
8 challenged documents that I have received. Is there anything
9 else that the Court has not ruled upon with regard to future
10 witnesses?

03:31PM

11 MR. RICHARD: The only open issue -- and we've
12 talked about it, so it's not that we haven't talked,
13 Your Honor -- but we have a disagreement on a couple of
14 provisions -- testimony in the video play for Mr. Peloquin. I
15 don't believe there's a dispute as to the exhibits that will be
16 introduced through that video. We've each designated those,
17 and I believe that those exhibits have been provided to
18 Your Honor.

03:31PM

19 But before we play the video, we probably need ten
20 minutes, unless they withdraw their objections, between now and
21 the next time we convene. You know, it's a standard -- and
22 maybe we have an objection to something they designated. But
23 my memory is that -- I'd like to just hit play on the Peloquin
24 video. It's about an hour and eight minutes. But if -- there
25 are a couple of provisions that Your Honor's going to have to

03:32PM

1 rule on at this point, a couple of objections or questions.

2 THE COURT: How has that been presented to the
3 Court?

03:32PM

4 MR. RICHARD: The testimony? I believe it's -- I'm
5 not sure.

03:32PM

6 THE COURT: We had discussed a procedure. I think
7 we specifically talked about how the parties would present it
8 to the Court. And I gave you, I think, the following guidance,
9 that I only wanted to see the objections and have enough
10 context to make a ruling. And I would leave it to your
11 judgment as to how much context, essentially, you wanted to
12 provide the Court. And then I would receive that in hard paper
13 form.

03:32PM

14 So my question is: Where are we on that?

15 MR. RICHARD: Yes. I know that we have filed with
16 the Court some portion of Mr. Peloquin's testimony. We'll meet
17 and confer. And if there's two pages I need to bring tomorrow,
18 I just can't -- we've gone back and forth in this video so
19 often, I don't -- I can't stand here and say the Court has the
20 most recent limited objections.

03:33PM

21 THE COURT: Well, what I would suggest you do is,
22 when you go back this afternoon, perhaps what you can do is
23 just send it. I want it in hard copy. But if it's not that
24 voluminous and you want to send it electronically, you can send
25 it electronically. Copy Mr. Blum and send it to the Court's

03:33PM

1 chambers e-mail.

2 MR. RICHARD: Thank you very much, Your Honor.

3 THE COURT: And there are no other witnesses that
4 have been presented to the Court with challenged exhibits?

03:33PM 5 MR. RICHARD: No, Your Honor. We're meeting and
6 conferring on the experts for -- for Monday and Tuesday.

7 THE COURT: All right. Then we're in recess. Have
8 a good evening, everyone.

9 MR. BLUM: May I ask a logistical question?

03:33PM 10 THE COURT: Yes.

11 MR. BLUM: Have you made any decisions on next
12 Wednesday?

13 THE COURT: I really haven't. I wanted to get --
14 This is off the record.

03:34PM 15 (Off-the-record discussion.)

16 THE COURT: Let's go back on the record on this one.
17 There was an issue with regard to the bench plan
18 that the Court did not address and that has to do with time. I
19 believe that Mr. Richard was hoping that the 20 hours that the
03:34PM 20 parties had agreed to, after I'd asked them to try to pare this
21 down, didn't include the portion of the bench trial.

22 That was not my expectation, Mr. Richard. My
23 expectation was that you were going to get 20 hours to complete
24 this trial. It doesn't appear to me that there's going to be
03:35PM 25 much time devoted to the bench trial.

1 Let me leave it at this. If, in my view, you are
2 making a good faith effort and are being efficient and you need
3 a little extra time, I'm not going to likely shut you off. But
4 you should make an earnest good faith effort to get through the
03:35PM 5 evidence in the time that everyone has agreed to.

6 And if -- that's why I will at times, I will try to
7 give gentle reminders, like I did with Mr. Gee. And it doesn't
8 mean that I'm necessarily right. Sometimes it's not entirely
9 clear because I don't know what your other witnesses are going
03:35PM 10 to say or really what your positions are going to be.

11 But I do notice at times that, you know, you're
12 spending time on things that, in my judgment -- and this is not
13 critical, we all have different judgments -- but that probably
14 jurors are not going to be nearly as concerned about that
03:36PM 15 perhaps you think they're going to be concerned about.

16 So make your best judgments. I do intend to hold
17 you within due process limitations to the time that everyone
18 has agreed to, but I also expect to be reasonable. And I think
19 if you're being reasonable and you need some additional time on
03:36PM 20 either side, I will certainly give it consideration.

21 We're in recess.

22 (Proceedings adjourned at 3:36 p.m.)
23
24
25

CERTIFICATE OF OFFICIAL REPORTER

COUNTY OF LOS ANGELES)
STATE OF CALIFORNIA)

DATED THIS 19TH DAY OF NOVEMBER, 2021.

/S/ MYRA L. PONCE

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